IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2371 of 2002
With
CIVIL APPLICATION -For Direction- No.3897 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE MD SHAH

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NEW INDIA ASSURANCE CO LTD. - Appellant(s)
Versus
BHAVANI NANJI PACHANBHAI PATEL & 5 - Defendant(s)

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Appearance :
MR SUNIL B PARIKH for Appellant(s) : 1,
MR SK PATEL for Defendant(s) : 1 - 2.
MR MANISH G PATEL for Defendant(s) : 1 - 2.
None for Defendant(s) : 3 - 5,5.2.1 - 6.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 02/05/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. This appeal is admitted and upon request of learned counsels for the parties, this appeal is taken up today for final hearing.

2. Heard learned counsel Mr.Parikh for the appellant

and learned advocate Mr.H.M.Modi for respondent No.1 and 2, original claimants.

3. Original claimants filed MACP No.906 of 1997 before learned Motor Accident Claim Tribunal, Kachchh at Bhuj Under Section 166 of the M.V.Act for obtaining compensation for the death of Pushpaben N.Bhawani on 21st August, 1997 in vehicular accident. The other opponents of this appeal are owners and drivers of the vehicles involved in the accident.

4. In the aforesaid MACP No.906 of 1997 at Exh.50 in shape of interim application, request was made by the claimants to award compensation under Section 163A of the M.V.Act.

5. Learned Tribunal was pleased to grant the above said application at Exh.50 on 15th January 2001 awarding compensation of Rs.1,94,500/- to the claimants under structural formula. It is noteworthy that the claimants treated application at Exh.50 as an interim application and continued to proceed with MACP No.906/97 for determination of compensation under fault liability and hence, this First Appeal is preferred by original opponent No.3, the New India Assurance Co.Ltd. The main

grievance, which is voiced by the appellant through his appeal is in respect of entitlement of the claimant to receive compensation under both schemes i.e. (1) on no fault liability and structural formula and (2) fault liability.

6. It is vehemently urged that the claimants either claim compensation under 163A or under 166 of the M.V.Act, but not on both the provisions.

7. Civil Application No.3897 of 2006 is preferred by original claimant in the First Appeal for direction to the Tribunal to disburse an amount of award passed by the Tribunal under Section 163A of the M.V.Act. It is also pertinent to note that in Civil Application No.8708 of 2002, this Court directed the Insurance Co. to deposit the amount and stay of execution of the award was granted. Further directions of this Court were in regard to investment of the deposited amount.

8. After hearing the learned counsels and going through the record, now, it clearly appears that MACP No.906/97 is withdrawn by claimants and the same stands disposed of as withdrawn. Learned advocate for the claimant placed on record in C.A.No.3897 of 2006, copy of the withdrawal

pursis filed at Exh.67 on 1st April, 2006 and the order passed by the Tribunal on the same day permitting the withdrawal of said MACP No.906/97.

9. In the above view of matter, now award passed by the Tribunal under Section 163A of the M.V.Act becomes final and the grievance voiced by the appellant in F.A.No.2371 of 2002 does not survive. True, it is that the compensation under Section 163A is final in nature and can not be altered or varied in any other proceedings. Remedy under Section 163A is not in addition to the remedy available under Section 166 of the M.V.Act. Therefore, remedy for compensation under Section 163A and 166 of the M.V.Act is independent of each other. It is for the claimant to elect or opt for either of them. This law is settled by the Apex court in the matter of New India Assurance Co.Ltd. V/s.Raghu and others as reported in ACJ 2002 Page 217 and in the matter of Girishbhai Soni and others V/s. United Insurance Co.Ltd. Baroda as reported in 2004 (2) GLR, Page No.1597.

10. In this view of matter, since MACP No.906/97 so far as it related for determination of compensation on the ground of fault liability does not survive, this appeal filed on the above ground stands dismissed.

11. Civil Application No.3897/2006 for direction also stands dismissed as the same would not now survive. The Tribunal may disburse the amount deposited by the appellant to the claimant in accordance with award passed under Section 163A of the M.V.Act.

(J.R.VORA, J.) (M.D.SHAH, J.)

*Ashish